IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

WP(C).No. 27142 of 2005(F)

CMA.43/2003 of PRL.SUB COURT, IRINJALAKUDA
EA.94/02 IN EP.292/2000 IN OS.441/1998
of MUNSIFF'S COURT, KODUNGALLUR

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PETITIONER:

SADANANDAN, S/O.POLLASSERY CHENNAN,
PERINJANAM VILLAGE AND DESOM, KODUNGALLUR TALUK.

BY ADV. SRI.T.M.CHANDRAN

RESPONDENT:

VENKITESWARA PAI,
S/O.KOCHIKKARAN PUTHU PAI, PANANGAD DESOM,
SREENARAYANAPURAM VILLAGE, KODUNGALLUR TALUK.

BY ADV. SRI.BABU KARUKAPADATH
SRI.K.A.NOUSHAD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.27142/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF EA.94/02 FILED BY PETR. BEFORE MUNSIFF'S COURT, KODUNGALLUR

EXT.P2 – TRUE COPY OF I.A.3043/03 IN CMA.43/03 OF SUB COURT, IRINJALAKUDA.

EXT.P3 – TRUE COPY OF OBJECTION DT.3.10.03 FILED BY RESPONDENT.

EXT.P4 – TRUE COPY OF MEMORANDUM OF APPEAL IN CMA.43/03 FILED BEFORE SUB COURT, IRINJALAKUDA.

EXT.P5 – TRUE COPY OF ORDER DT.27.7.04 IN I.A.3043/03 OF SUB COURT, IRINJALAKUDA.

EXT.P6 – TRUE COPY OF ORDER DT.27.7.04 IN CMA.43/03.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.27142 OF 2005

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DATED THIS THE 3RD AUGUST, 2007

J U D G M E N T

This Writ Petition is filed under Article 227 of the Constitution impugning Exts.P5 and P6 orders of the lower appellate court dismissing a Civil Miscellaneous Appeal filed by the petitioner-judgment-debtor against the order dismissing an application to set aside sale and an application for condonation of delay caused in the matter of filing the Civil Miscellaneous Appeal. The delay petition was dismissed under Ext.P5 on the reason that the counsel for the petitioner reported no instructions and that the petitioner was absent. The C.M.Appeal was dismissed on the reason that the delay petition was dismissed.

2. On hearing the submissions of the learned counsel for the petitioner for admission, this Court admitted the Writ Petition and granted stay on condition that the petitioner deposits a sum of Rs.31,470/- for which the property was purchased in auction by the respondent-decree-holder himself. It is conceded before me that the deposit was made and the amount was withdrawn by the decree-holder.

3. Mr.T.M.Chandran, counsel for the petitioner submitted that

the petitioner is in impecunious circumstances and that the property which is now sold to the decree-holder is the only property belonging to the petitioner. Smt.Vaheeda Babu, counsel for the respondent-decree-holder submitted that though it is true that the sum of Rs.31,470/- deposited by the petitioner was withdrawn by the decree-holder, more amounts were due to the decree-holder on account of the value of the sale certificate and also on account of the statutory 5% commission, apart from amounts which may be due by way of interest.

4. The circumstance that the petitioner deposited the amount and the respondent withdrew the same is of considerable moment. Having regard to the rival submissions made at the Bar, I am of the view that if the petitioner is ready to pay the expenses actually incurred by the decree-holder on account of the sale inclusive of the charges for preparation of the sale certificate and also the amount statutorily due, being 5% of the auction amount, together with incidental expenses, the sale in question can be set aside. Accordingly, the Writ Petition will stand disposed of issuing the following directions:-

The impugned orders and the sale in favour of the respondent-decree-holder will stand set aside on condition that the petitioner will

pay to the respondent-decree-holder within six weeks from today, the amounts actually incurred by the decree-holder for the conduct of the sale inclusive of the charges expended for preparing the sale certificate to be claimed by the decree-holder through a statement in that regard within one month from today, together with a lumpsum amount of Rs.2000/-. Once payment is made as directed above, the sale will stand set aside. If payment is not made within the time-frame, Exts.P5 and P6 orders will stand confirmed.

(PIUS C.KURIAKOSE, JUDGE)

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